



2018/9 REVIEW OF MOBILE TERMINATION RATES IN GUERNSEY

STATUTORY NOTICE OF A PROPOSED DECISION

Guernsey Competition and Regulatory Authority

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1. EXECUTIVE SUMMARY

1.1 The Guernsey Competition and Regulatory Authority (the **Authority**)¹ is issuing this Statutory Notice of a Proposed Decision which sets out the revised price control applicable to Guernsey MTRs so as to bring MTRs down to a level that, based on the available evidence, is likely to be a much closer approximation of Guernsey MNO's LRIC costs and is more closely aligned with the prevailing level of MTRs in the UK and other European countries.

1.2 This Statutory Notice of a Proposed Decision sets out the decision of the Authority. In due course, the Authority may issue a Statutory Notice of a Final Decision or a new Statutory Notice of a Proposed Decision if responses are received, following the process outlined in Article 5 of *Telecommunications (Bailiwick of Guernsey) Law 2001* (the **Telecoms Law**).

2. STRUCTURE OF THIS DOCUMENT

2.1 This document sets out the conclusions which the Authority has reached, having taken full account of the comments provided to CICRA 19/31 – Mobile Termination Rates – Draft Decision – Guernsey - 4 July 2019 and to CICRA 19/41 – Mobile Terminations Rates – Final Decision – Guernsey – 23 September 2019.

2.2 The document is structured as follows:

Section 3	Outlines the background and legislative basis for this Decision
Section 4	Sets out the Statutory Notice of a Proposed Decision
Section 5	Sets out the next steps

3. LEGISLATIVE AND LICENSING BACKGROUND

Legal Background

3.1 In considering the regulation of MTRs, including the level at which it should be capped and whether to apply a glide path to reach a proposed final MTR, reference is made to the GCRA's statutory duties as identified below. The statutory duties of the GCRA are defined in Section 2 of *The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001* (the **Utilities Law**).

3.2 In exercising its respective functions and powers under this Law and any Sector Law, the Guernsey Competition and Regulatory Authority shall have a duty to promote (and, where they conflict, to balance) the following objectives:

¹ The Jersey Competition Regulatory Authority (JCRA) and Guernsey Competition and Regulatory Authority (GCRA) co-ordinate their activities in the Channel Islands. However, for the purposes of this document, the Authority refers to the GCRA only as the Decision relates to Guernsey only.

- to protect the interests of consumers and other users in the Bailiwick in respect of the prices charged for, and the quality, service levels, permanence and variety of, utility services (Section 2(a) Utilities Law).
- to ensure that utility activities are carried out in such a way as best to serve and contribute to the economic and social development and well-being of the Bailiwick (Section 2(c) Utilities Law).

3.3 The Telecoms Law provides for a licensing regime. Section 5(1) of the Telecoms Law provides that the Authority may include in licences such conditions as it considers necessary to carry out its functions. The Telecoms Law specifically provides that such conditions can include (but are not limited to):

- conditions intended to prevent and control anti-competitive behaviour; and
- conditions regulating the prices, premiums and discounts that may be changed or (as the case may be) allowed by a licensee which has a dominant position in a relevant market.

3.4 These provisions allow the Authority to regulate MTRs, should there be a need for regulatory intervention.

Regulatory Framework

Finding of SMP

3.5 In October 2017, following a review of the mobile market, the GCRA made a decision with respect to the existence of SMP in the markets for mobile call termination. That decision found that each mobile operator has SMP in the market for terminating calls on its own network.

3.6 MNOs, in their responses to the Call for Information, confirmed that they considered that the October 2017 decision of the Authority still stands.

Licence Conditions - MNOS

3.7 Condition 28.2 of the licence issued to JT, Sure and Airtel provides that:

“The GCRA may determine the maximum level of charges the Licensee may apply for services within a relevant market in which the Licensee has been found to be dominant. A determination may:

- Provide for the overall limit to apply to services or any combination of services;*
- Restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or*
- Provide for different limits to apply in relation to different periods of time falling within the periods to which the determination applies.”*

3.8 This condition therefore allows the GCRA to regulate the prices that an MNO charges for telecommunications services in a way and for a time that it deems appropriate, provided that the MNO has a dominant position in the relevant market in which those services are supplied.

3.9 Condition 29.1(b) of MNO’s licence is designed to protect fair competition in the markets in which the MNO operates, and provides as follows:

“The Licensee shall: ...

(c) comply with any direction issued by the GCRA for the purpose of preventing any practice or arrangement that has the object or effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Mobile Telecommunications Networks or the provision of Mobile Telecommunications Services.”

3.10 This condition allows the GCRA to give directions to an MNO, including in relation to the prices that it charges.

Approach to setting MTRs

3.11 The EC Recommendation² expects that termination rates are set based on the costs incurred by an efficient operator, and that this is based on bottom-up modelling using LRIC as the most appropriate costing methodology.

3.12 Mindful of its statutory duties, the GRCA adopts a proportionate approach to the analysis of MTRs, bearing in mind the comparatively small scale of the regulated markets and the resources it has available.

4. STATUTORY NOTICE OF A PROPOSED DECISION

4.1 For the reasons set out in the draft decision entitled “2018/19 Review of Mobile Termination Rates in Guernsey”, published on 4 July 2019; and in the final decision entitled “2018/19 Review of Mobile Termination Rates in Guernsey”, published on 9 April 2020, the Guernsey Competition and Regulatory Authority proposes to issue a direction (“the **Direction**”) to each of the operators licensed to provide mobile telecommunications services in Guernsey, listed in the schedule hereto, under Condition 28.2 of their respective licences.

4.2 Before exercising a regulatory function, the Authority is required to give ‘Statutory Notice of a Proposed Decision’. This gives notice that the Authority intends to make the following Direction.

4.3 The Authority intends to make the following Direction on or about 12 May 2020.

DIRECTION

1. This Direction shall, except where specified otherwise, apply from 1 June 2020; and shall remain in force until a further decision of the Authority.
2. For the purposes of these Directions:
 - a. **“Call”** means a voice call which originates on a public electronic communications network (whether fixed or mobile) and which is terminated to a mobile number within a number range allocated to the Licensee, for which the Licensee is able to set the call termination charge;
 - b. **“call termination charge”** means either a fixed-to-mobile call termination charge or a mobile-to-mobile call termination charge;

² Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU

- c. **“fixed-to-mobile call”** means a Call originating on a fixed public electronic communications network;
 - d. **“fixed-to-mobile call termination charge”** means the charge made by the Licensee to terminate a fixed-to-mobile call;
 - e. **“the Authority”** means the Guernsey Competition and Regulatory Authority;
 - f. **“Licensee”** means each of the licensees listed in the schedule hereto;
 - g. **“mobile number”** means a telephone number that is designated under the UK’s National Telephone Numbering Plan (NTNP) for use in connection with Mobile Services (as that term is defined in the NTNP);
 - h. **“mobile-to-mobile call”** means a Call originating on a mobile public electronic communications network of another mobile communications provider;
 - i. **“mobile-to-mobile call termination charge”** means the charge made by the Licensee to termination a mobile-to-mobile call;
 - j. **“pence per minute”** means the sum in pence charged for a minute of a Call;
3. The Licensee shall not unduly discriminate against particular persons or against a particular description of persons, in relation to matters connected with the mobile call termination service.
 4. The Licensee shall ensure that for each Call received on any day after 31 May 2020 the call termination charge (which shall be expressed in pence per minute) does not exceed the following charge ceilings:
 - a. For the period from **1 June 2020 to 31 May 2021: 3.11 pence per minute;**
 - b. For the period from **1 June 2021 to 31 May 2022: 1.11 pence per minute;**
 - c. For the period commencing on **1 June 2022: 0.7 pence per minute.**
 5. Without prejudice to the Authority’s statutory information gathering powers, the Licensee shall provide to the Authority in writing any information reasonably required by the Authority for the Licensee to demonstrate compliance with this Direction at any time upon reasonable notice.
 6. Unless the Authority otherwise consents in writing, the Licensee shall publish its call termination charge.
 7. The Licensee shall publish each proposed amendment to the call termination charges not less than twenty eight days before the date that any such amendment comes into effect.
 8. Publication for the purposes of paragraphs 6 and 7 above shall be effected by –
 - a. Sending a copy of such information or any appropriate parts of it to any person who may reasonably request such a copy; and

- b. Placing a readily accessible copy of such information on a relevant and publicly accessible website operated or controlled by the Licensee or on behalf of the Licensee.

SCHEDULE

The Direction is issued to the following licensees:

1. JT (Guernsey) Limited
2. Sure (Guernsey) Limited
3. Airtel-Vodafone (Guernsey) Limited

5. NEXT STEPS

- 5.1 This Statutory Notice of a Proposed Decision sets out the intended Direction of the Authority. If representations from the licensee are received before 11 May 2020 regarding the proposed decision, the Authority will consider them and either decide not to issue this Direction, to issue a new Statutory Notice of a Proposed Decision, or to issue a Statutory Notice of Final Decision confirming the Direction. If no responses are received, the Direction will be made on or about 12 May 2020. At such time as any statutory final decision takes effect, it becomes binding on all parties.